



UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/540,319 03/31/00 SHARTLE

R LFS-93

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QM12/0731

EXAMINER

CARTER, R

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/540,319	SHARTLE ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
	Ryan C. Carter	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03 March 2000.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 1-16 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

15)  Notice of References Cited (PTO-892)  
16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
17)  Information Disclosure Statement(s) (PTO 1449) Paper No(s). \_\_\_\_\_

18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
19)  Notice of Informal Patent Application (PTO-152)  
20)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a medical diagnostic device, classified in class 600, subclass 345.
- II. Claims 14-16, drawn to a method of preparing an electrically conductive pattern, classified in class 156, subclass 047.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make another and materially different product such as an electrically conductive pattern for measuring analyte concentration of any non-biological fluid.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Telephone calls were made to Mr. James Riesenfeld on July 16, 2001 and July 18, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Carter whose telephone number is (703)308-2990. The examiner can normally be reached on Monday-Thursday, 9a.m.-5p.m..

The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-0758 for regular communications and (703)308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

rcc *lcc*  
July 19, 2001

*Robert L. Nasser*  
ROBERT L. NASSER  
PRIMARY EXAMINER